

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CURTIS HAMILTON,	§
	§
Defendant Below-	§ No. 728, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0906018693
Plaintiff Below-	§
Appellee.	§

Submitted: May 28, 2010

Decided: July 7, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 7th day of July 2010, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Curtis Hamilton (Hamilton), pled guilty on September 2, 2009 to one count of possession with intent to deliver heroin. He also admitted to several pending charges of violating probation. Thereafter, Hamilton moved to withdraw his guilty plea, which the Superior Court denied. The Superior Court sentenced Hamilton as a habitual offender to five years at Level V incarceration to be followed by six months at Level III probation. This is Hamilton's direct appeal.

(2) Hamilton's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Hamilton's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Hamilton's attorney informed him of the provisions of Rule 26(c) and provided Hamilton with a copy of the motion to withdraw and the accompanying brief. Hamilton also was informed of his right to supplement his attorney's presentation. Hamilton has not raised any issues for this Court's consideration. The State has responded to the position taken by Hamilton's counsel and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.*

* *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) This Court has reviewed the record carefully and has concluded that Hamilton's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Hamilton's counsel has made a conscientious effort to examine the record and the law and has properly determined that Hamilton could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice